

RELEASED IN FULL

INFO	LOG-00	AF-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00
	WHA-00	EAP-00	EB-00	EUR-00	UTED-00	FEMA-01	H-00
	TEDE-00	INR-00	LAB-01	L-00	NEA-00	DCP-00	NSAE-00
	ISN-00	NSCE-00	OIC-00	OIG-00	NIMA-00	PA-00	GIWI-00
	PRS-00	P-00	ISNE-00	DOHS-00	SP-00	IRM-00	SSO-00
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SUBJECT: NOTE VERBALE ON ADVANCE UNEDITED VERSION OF LIST
OF ISSUES ADOPTED AT HUMAN RIGHT'S COMMITTEE 86TH SESSION

1. Mission received a note verbale from the Secretary-General regarding the U.S. reports that will be considered during the 87th session of the Human Rights Committee. The includes a "Note for the Presentation of Reports to the UNHRC," (para 2 below) and an advance unedited list of issues adopted at by the Human Rights Committee at its 86th session (para 3 below). This communication has been sent via e-mail to IO/SHA. This communication is number 9 on the Geneva 2006 Communications Log.

2. Begin note on presentation:

Note for the presentation of United States of America
periodic reports to the UNHRC

At the request of the United States of America, the meeting has been scheduled for one day divided into two meetings (3 hours per meeting). This means 6 working hours. As will be appreciated, this does not allow much time for presentation, questions, answers and discussion, and the Committee's schedule must therefore be carefully managed. In addition, in conformity with the Committee's practice, additional time may be needed to complete the examination of the reports. Therefore, the Committee would appreciate the cooperation and flexibility from the United States

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delegation.

The meeting will begin with an opening statement by the Chairperson (2 minutes introduction) and then the Head of the Delegation (15 minutes statement).

The Head of the Delegation or colleagues designated by the Head will then be expected to deal, seriatim, with the list of issues (questions) of interest to the Committee.

At the meeting, the issues will normally be divided into two parts, for ease of presentation and to encourage a more productive discussion. The Chairperson will indicate to the Head of Delegation at the outset of the meeting which issues she would expect to be dealt with in the first part and which in the second.

Following the Delegation's comments on the first set of issues, members of the Committee who wish will put supplementary questions, which will be answered by the Delegation.

The same procedure will be repeated for the second part of the list of issues.

With a view to covering all the issues adequately, and avoiding time pressure toward the end of the day, it will of course be necessary for the Delegation's answers to be as concise as possible. Statistical or lengthy technical material should therefore be distributed to members (preferably in advance), and not presented viva voce; similarly, constitutional and legislative texts which are available to members need not be repeated.

In order to give balanced treatment to all the issues, it would also be helpful, as a rule of thumb, if the first part could be dealt with at the first meeting, leaving the following meeting for the second part, and closing remarks.

Following the completion of questions and answers on both parts, and any further exchange between the Delegation and members of the Committee, the Chairperson will sum up.

The Head of Delegation will normally make brief closing remarks.

3. Begin list of issues:

LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE
CONSIDERATION OF THE SECOND AND THIRD PERIODIC REPORTS

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OF THE UNITED STATES OF AMERICA

ADVANCED UNEDITED VERSION

Right to self-determination and rights of persons belonging to minorities (art. 1 and 27)

1. Does the State party rely on the doctrine of discovery in its relationship with indigenous peoples, and if so what are the legal consequences of such approach? What is the status and force of law of treaties with Indian tribes? Please indicate how the principle set forth in U.S. law and practice, by which recognized tribal property rights are subject to diminishment or elimination under the plenary authority reserved to the U.S. Congress for conducting Indian affairs, complies with articles 1 and 27 of the Covenant? (Previous concluding observations, 290 and 302;

Periodic report, 15 and 484)

Constitutional and legal framework within which the Covenant is implemented (art.2)

2. Please explain further what are the obstacles to the withdrawal of reservations, in particular to articles 6 (5) and 7 of the Covenant (Periodic report, 448; Previous concluding observations, 278-279 and 292).

Counter-terrorism measures and respect of Covenant guarantees

3. Please comment on the compatibility with the Covenant of the definition of terrorism under national law and of (the Congress' Authorization for Use of Military Force Joint Resolution, which provides the President all powers "necessary and appropriate to protect American citizens from terrorist acts by those who attacked the U.S, on September 11, 2001. (Periodic report, 90-94 and 164-165; Core document, 135-138)

4. Please indicate in detail how the State Party ensures full respect for the rights enshrined in the Covenant in relation to its actions to combat terrorism (a) in Afghanistan; (b) in Iraq, (c) in any other place outside its territory, and (d) on its own territory, in particular when it holds detainees. In particular, please comment on the allegation that the State party has established secret detention facilities, on U.S. vessels and aircrafts as well as outside the U.S., and that it has not acknowledged all

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detentions of individuals captured within the framework of counter-terrorism activities. How would such practices comply with the Covenant, in particular with articles 7, 9 and 10?

5. Please provide updated information on the identity, place of origin, place of deprivation of liberty and number of persons held in Guantanamo as well as information on the release of such persons and the date of their release, where applicable. Please provide also information on the status of proceedings of cases where detainees have challenged their detention and their legal status before a U.S. federal court, and on the outcome of such challenges. Please report on the significance of Section 1005 of the Detainee Treatment Act of 2005 in this regard, and on its impact on challenges already made by Guantanamo detainees. What are the guarantees ensuring the independence of Combatant Status Review Tribunals (CSRTs) and Administrative Review Boards (ARBs) from the executive branch and the army, and how are the restrictions on the rights of detainees to have access to all proceedings and evidence justified? Please also report on the number of Guantanamo detainees who have been or are still on hunger strikes, and provide information on the methods used and the reasons justifying force-feeding. (Periodic report, 173; CAT/C/48/Add.3/Rev.1, Annexes, Part I, 29-43 and 55-62)

6. Please provide more information on the extent to which the 2001 Presidential Military Order, which authorizes the trial of non U.S. citizens suspected of terrorism before military commissions, complies with the Covenant. Please indicate how proceedings before these commissions ensure due process, and guarantee that evidence obtained via torture or ill-treatment shall not be used. Please comment also on how restrictions to the right to appeal sentences are compatible with the Covenant, (articles 2, 6, 7, 14 and 26) (CAT/C/48/Add.3/Rev.1, Annexes, Part I, 48-54)

7. Please report on interrogation techniques authorized or practised in Guantanamo, Afghanistan, Iraq, or other places of detention under U.S. control or by U.S. agents outside the U.S., including non-military services or contract employees. Has the State party authorized, and does it still authorize, the use of techniques such as stress positions, isolation, sensory deprivation, hooding, exposure to cold or heat, sleep and dietary adjustments, 20-hour interrogations, removal of clothing and of all comfort items, forced shaving, removal of religious items, use of dogs to instill fear and mock-drowning? If so, please report on the compliance of such techniques with articles 7, 10 and 18 of

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the Covenant. (CAT/C/48/Add.3/Rev.1, Annexes, Part I, 78-82)

8. Please comment on measures adopted to ensure full implementation of Section 1003 of the Detainee Treatment Act of 2005, including in relation to persons detained by non-military services and contract employees, as well as on remedies available in cases of non-implementation of this provision. Does the State Party believe that there are any circumstances in which methods prohibited by article 7 of the Covenant may be lawfully used?

9. Please provide information about the independence and impartiality of the official investigations conducted into allegations of torture and ill-treatment by agents of U.S. military and non-military services, or contract employees, in detention facilities in Guantanamo, Afghanistan and Iraq, and into alleged cases of suspicious death in custody in any of these locations. Please also indicate whether the role of all U.S. agencies, including the Central Intelligence Agency, was fully investigated. What made it possible for such acts to occur? Please provide updated information on the results of the criminal investigations on the allegations of torture and ill-treatment by U.S. military or non-military services, or contract employees in the Abu Ghraib prison, as well as on prosecutions launched and sentences passed. Has compensation been granted to the victims? (articles 6 and 7) (CAT/C/48/Add.3/Rev.1, Annexes, Part I, 83-93 and Part II, 110-125)

10. Has the State party adopted a policy to send, or to assist in the sending of suspected terrorists to third countries, either from U.S. or other States' territories, for purposes of detention and interrogation? If so, please indicate the number of affected persons and their place of detention and/or interrogation. What measures have been adopted to ensure that their rights under the Covenant are fully respected? Please provide information on cases where removal/transfer was carried out based on diplomatic assurances received from a foreign government. Please explain in more detail whether there are exceptions, in particular for suspected terrorists, to the right of aliens to challenge their deportation before a court on the basis of the non-refoulement rule. Do such remedies have a suspensive effect? What were the results of the investigations conducted by the State party, if any, into the numerous allegations that persons have been sent to third countries where they have undergone torture and ill-treatment? In this regard, please comment on the case of Maher Arar, a Canadian citizen deported in October 2002 to

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Jordan and then Syria, and who was allegedly tortured, (articles 6, 7, 9, 10) (Periodic report, 220-241; CAT/C/48/Add.3/Rev.1, Annexes, Part I, 45-47)

11. Please indicate how many persons have been or are still being detained on the basis of the Material Witness Statute, for how long, how many of them have been charged with crimes related to terrorism, and how their rights under the Covenant were and continue to be ensured. Please comment also on withholding information regarding such detainees and how far closing of the immigration court hearings to the public is compatible with the Covenant, (articles 9,10 and 14) (Periodic report, 168-169)

12. Please report in more detail on the compliance with the Covenant of: (a) Section 213 of the Patriot Act, expanding the possibility of delayed notification of home and office searches; (b) Section 215 of the Patriot Act, regarding access to individuals' personal records and belongings; (c) Section 505, relating to the issuance of national security letters; and (d) Section 412, regarding the possibility of indefinite detention of foreigners suspected to be terrorists. Please be more specific about the power granted to the judiciary to oversee the implementation of these provisions, and indicate to what extent affected individuals may challenge their implementation before a court. Please provide updated information on the extent to which the State party has invoked the above-mentioned provisions, and provide examples. (Periodic report, 308-312)

13. The State Party, including through the National Security Agency (NSA), reportedly has monitored and still monitors phone, email, and fax communications of individuals both within and outside the LLS., without any judicial oversight. Please comment, and explain how such practices comply with article 17 of the Covenant.
Non discrimination and right of equality before the law and to the equal protection of the law (art 2 and 26)

14. Please provide information on measures taken by the State Party to reduce de facto segregation in public schools, reportedly caused by discrepancies between the racial and ethnic composition of large urban districts and their surrounding suburbs, and the manner in which schools districts are created, funded and regulated (Periodic report, 46-49)

15. What measures has the State party adopted to assess and eliminate reported practices of racial profiling by law

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enforcement officials, in particular in the administration of the criminal justice system?

16. Please report on measures implemented during and after

the disaster caused by Hurricane Katrina in order to ensure equal treatment of victims, without discrimination based on race, social origin and age, in particular in the context of evacuations. Please comment on the information that measures taken have exacerbated problems in respect of the Afro-American population, with regard to homelessness, loss of property, inadequate access to healthcare, loss of educational opportunities, legal remedies and voting rights.

Right to life (art. 6)

17. Has the State party taken steps to review federal and state legislation with a view to assessing whether offences carrying the death penalty are strictly restricted to the most serious crimes? Please also indicate whether the death penalty has been expanded to new offences over the reporting period. What steps, if any, has the State party adopted to ensure that the application of death penalty is not imposed disproportionately on ethnic minorities as well as on low-income population, and to improve the quality of legal representation provided to indigent defendants? (Periodic report, 459; Previous concluding observations, 281 and 296)

18. In the view of the State party, what impact on the rights of women under articles 3, 6, 24 and 26 of the Covenant have (a) government regulations proscribing abortion counselling in programs receiving federal funding; (b) the reported policy of the State party to promote sexual education programmes that sanction abstinence as the sole method of pregnancy and disease prevention; and (c) the reported states and federal legislation authorizing health care providers to refuse contraception, sterilization or other reproductive health services on the basis of moral disapproval? (Periodic report, 329)

Prohibition of torture and cruel, inhuman or degrading treatment or punishment (art. 7)

19. Please comment on the use of electronic control equipment (tasers, stun guns, stun belts etc.) by law enforcement officials. It is reported to the Committee that more than 160 people have died following the use of taser guns by law enforcement personnel since 2001. Please provide information on the results of investigations conducted into

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these deaths. Please report about current regulations for the use of such electronic equipment by the police and other law enforcement personnel.

20. Please report on the compliance with article 7 of the Covenant of (a) the practice of non-therapeutic research conducted on mentally ill persons or persons with impaired decision-making capacity, including minors, and (b) domestic regulations authorizing the President to waive the prior informed-consent requirement for the administration of an investigational new drug to a member of the U.S. Armed Forces, if the President determines that obtaining consent is not feasible, is contrary to the best interests of the military members, or is not in the interests of U.S. national security. (Periodic report, 143 and 480; Previous concluding observations, 286 and 300)
Treatment of persons deprived of liberty (art. 10)

21. What are the conditions of detention and the rights of detainees in federal and state maximum security prisons, in comparison with ordinary prisoners? Please comment on the information that many inmates confined in these prisons do not meet the criteria required to be held in such facilities, and that many of them suffer from mental illness. What measures has the State Party taken to protect inmates in federal or state prisons against rape, abuse or other acts of violence? Please also comment on information of shackling women when giving birth in detention. (Periodic report, 476; Previous concluding observations, 285 and 299)

22. The Prison Litigation Reform Act of 1995 bars claims based on emotional and psychological mistreatment unless they are accompanied by physical injury. Please explain what the reasons for such restrictions are, and how these restrictions comply with articles 2(3), 7 and 10 of the Covenant

Freedom of association (art, 22)

23. Please explain any restriction imposed on the right to form and join trade unions of, inter alia, agricultural workers, domestic workers, federal, state and local government employees, and immigrant workers, including undocumented workers. Please comment on the information that meatpacking and poultry companies, for example in North Carolina (1996) and Nebraska (2001), have harassed, intimidated, and retaliated against workers - of whom a

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large proportion are immigrant workers - who have tried to organize, and provide information or) measures adopted to combat such practices. In light of the Supreme Court's decision in Hoffman Plastic Compounds, Inc. v. NLRB, please indicate what judicial remedies are made available to undocumented workers in such cases, (articles 2,22,26)

Protection of children (art 24)

24. Forty-two states are reported to have laws allowing children to receive life without parole sentences, and about 2,225 children are allegedly currently serving such sentences in U.S. prisons. It is also reported that such children may be placed in long-term isolation as punishment for disruptive or disturbed behaviour. Please comment, and explain how such legislation complies with the Covenant. (Periodic report, 287-288)

Right to take part in the conduct of public affairs, to vote and to be elected, and to have access to public service (art 25)

25. Please provide more details on the rules governing the removal and restoration of the right to vote for those convicted for criminal offences, and explain to what extent they comply with article 25 of the Covenant Has the recommendation made in 2001 by the National Commission on Federal Election Reform that all states restore voting rights to citizens who have fully served their sentences been implemented and if not, for what reasons? Please comment on the information that about five million citizens cannot vote due to a felony conviction, and that this practice has significant racial implications. (Periodic report, 410-412)

End list of issues.

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